

### Remarks

The June 16, 2004 Official Action has been carefully reviewed. In view of the amendments submitted herewith and the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset it is noted that a shortened statutory response period of three (3) months was set in the final Official Action dated June 16, 2004. Therefore, the initial response period is due to expire September 16, 2004. This amendment and request for reconsideration is being filed within two (2) months of the mailing date of the final Official Action.

At page 2 of the Official Action, the Examiner has maintained the objection to claim 52 under 37 C.F.R. §1.75(c) for allegedly failing to further limit the subject matter of a previous claim.

The Examiner has also rejected claims 30, 32-35, 37, 50-52, 54-57, and 59-61 under 35 U.S.C. §112, second paragraph for alleged indefiniteness. Applicants respectfully take exception to the Examiner's inclusion of claims 30, 32-35, 37, 50, 54, 56, 57 and 59-61 in this ground of rejection. There is no specific mention in the June 16, 2004 Official Action of any terminology in claims 30, 32-35, 37, 50, 54, 56, 57, and 59-61 that is deemed vague or indefinite. Only claims 51 and 55 are alleged to be vague and indefinite. None of claims 30, 32-35, 37, 50, 54, 56, 57 and 59-61 depends from either claim

51 or 55. Therefore, there is no basis for rejecting claims 30, 32-35, 37, 50, 54, 56, 57 and 59-61 under 35 U.S.C. §112, second paragraph.

Absent any legally cognizable rejection on the record herein, claims 30, 32-35, 37, 50, 54, 56, 57 and 59-61 should be indicated as allowed.

The foregoing objection and rejection constitute all of the grounds set forth in the June 16, 2004 Official Action for refusing the present application.

In accordance with this amendment, claims 31 and 49 have been cancelled for being drawn to a nonelected invention. Claims 51, 52, and 55 are currently amended. Support for these amendments can be found, for example, at Figure 4. No new matter has been introduced into this application by reason of any of the amendments presented herewith. Moreover, none of the present claim amendments is believed to constitute a surrender of any originally claimed subject matter, or a narrowing of the claims in order to establish patentability. The effect of these amendments is merely to make explicit that which was implicit in the claims as originally worded.

**CLAIM 52 LIMITS THE SUBJECT MATTER OF CLAIM 51, AS AMENDED**

The Examiner has maintained the objection to claim 51 under 37 C.F.R. §175(c) for allegedly failing to further limit the subject matter of a previous claim. Specifically, the Examiner asserts that both claims 51 and 52 are drawn to

nucleic acid molecules having the sequence of SEQ ID NO: 1.

Applicants submit that claim 51 relates to any nucleotide sequence which encodes the recited amino acid sequence. However, for the sake of clarity Applicants have amended claim 51 to remove the recitation of SEQ ID NO: 1. Also, the amino acid sequence is identified by reference to SEQ ID NO: 3. Accordingly, Applicants submit that claim 51, as amended, clearly relates to **any** nucleotide sequence which encodes for the amino acid sequence of SEQ ID NO: 3. Claim 52, however, provides a **specific** nucleic acid sequence which encodes for the amino acid sequence of SEQ ID NO: 3. Thus, Applicants submit that claim 52 clearly limits the subject matter of claim 51, as amended.

In view of the foregoing, Applicants respectfully request that the objection to claim 52 under 37 C.F.R. §1.75(c) be withdrawn.

**CLAIMS 51 AND 55, AS AMENDED, SATISFY THE DEFINITENESS REQUIREMENTS OF 35 U.S.C. §112, SECOND PARAGRAPH**

The Examiner has rejected claims 30, 32-35, 37, 50-52, 54-57, and 59-61 under 35 U.S.C. §112, second paragraph for alleged indefiniteness. Specifically, it is the Examiner's position that claim 51 is vague and indefinite in its recitation of the phrase "nucleic acid molecule as claimed in claim 50 wherein the nucleotide sequence (SEQ ID NO: 1) encodes an amino acid sequence shown in Fig. 4 from nucleotide

base 295 to nucleotide base 1035." The Examiner presumes that the claim is meant to be drawn to a nucleic acid molecule consisting of nucleotides 295 to 1035 of SEQ ID NO: 1.

Applicants respectfully disagree. As stated hereinabove, claim 51 relates to any nucleotide sequence which encodes the recited amino acid sequence. Applicants have, however, amended claim 51 to more clearly define the amino acid sequence as SEQ ID NO: 3. As seen in Figure 4, SEQ ID NO: 3 is the amino acid sequence encoded by a nucleic acid sequence "from nucleotide base 295 to nucleotide base 1035," as originally recited in claim 51. Thus, claim 51, as amended, clearly relates to nucleotide sequences which encode an amino acid of SEQ ID NO: 3.

In view of the Examiner's comments, Applicants have also reworded claim 52 to more specifically refer to a nucleic acid molecule having the sequence from nucleotide 295 to 1035 of SEQ ID NO: 1.

The Examiner also contends that claim 55 is vague and indefinite in its recitation of the phrase "the inducible promoter region is the ohp promoter region which lies between genes orfR regulatory gene (nucleotide base 1035) and orfT transport (nucleotide base 1450)." It is the Examiner's position that the meaning of the nucleotide base numbers is unclear. Accordingly, Applicants have amended claim 55 to recite the promoter region "which lies between nucleotides 1035 and 1450 of SEQ ID NO: 1," thereby eliminating any

ambiguity that may have been engendered by the previous language as to the nucleic acid molecule being claimed.

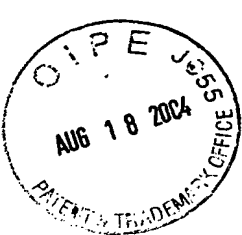
In light of all of the foregoing, Applicants respectfully request the withdrawal of the rejection of claims 30, 32-35, 37, 50-52, 54-57, and 59-61 under 35 U.S.C. §112, second paragraph.

### **CONCLUSION**

It is respectfully requested that the foregoing remarks and amendments presented herewith be entered in this application, since it is believed they clearly place the pending claims in condition for allowance. In any event, the claims as presently amended are believed to eliminate certain issues and better define other issues which would be raised on appeal, should an appeal be necessary in this case. These amendments were not presented earlier, because the arguments to which they respond, for the most part, were advanced for the first time in the June 16, 2004 Official Action.

In view of the amendments presented herewith, and the foregoing remarks, it is respectfully urged that the objection and rejections set forth in the June 16, 2004 Official Action be withdrawn and that this application be passed to issue.

In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding issues may be resolved through a telephone interview, the



Examiner is requested to telephone the undersigned attorney at  
the phone number give below.

Respectfully submitted,  
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